

114.5 CMR: DIVISION OF HEALTH CARE FINANCE AND POLICY

114.5 CMR 18.00 HEALTH INSURANCE RESPONSIBILITY DISCLOSURE

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18.01 General Provisions

(1) Scope and Purpose. 114.5 CMR 18.00 governs the filing requirements for the Health Insurance Responsibility Disclosure Form. Each Massachusetts Employer with eleven or more Full Time Equivalent Employees is required to file information about its compliance with the M.G.L. c. 151F requirement to adopt and maintain a Section 125 Cafeteria Plan. Each Employee of a Massachusetts Employer with eleven or more Full Time Equivalent Employees that declines the Employer's offer of health insurance or declines to use the Employer's Section 125 Cafeteria Plan to purchase other health insurance is required to sign an Employee HIRD form.

(2) Authority: 114.5 CMR 18.00 is adopted pursuant to M.G.L. c. 118G, § 6C.

(3) Effective Date. 114.5 CMR 18.00 is effective on April 1, 2009.

18.02 Definitions

Meaning of Terms: As used in 114.5 CMR 18.00, unless the context otherwise requires, terms have the following meanings:

151F Employer. An Employer subject to the M.G.L. c. 151F requirement to adopt and maintain a Section 125 Cafeteria Plan in accordance with the regulations of the Connector at 956 CMR 4.00 et seq.

Client Company. A person, association, partnership, corporation or other entity that uses workers provided by an Employee Leasing Company pursuant to a contract.

Connector. The Commonwealth Health Insurance Connector established under M.G.L. c. 176Q.

Division. The Division of Health Care Finance and Policy established under M.G.L. c. 118G or its designated agent.

Employee. An individual employed by any Employer at a Massachusetts location, whether or not the individual is a Massachusetts resident, for at least one month.

Employee Leasing Company. A sole proprietorship, partnership, corporation or other form of business entity whose business consists largely of leasing Employees to one or more Client Companies under contractual arrangements that retain for such Employee leasing companies a substantial portion of personnel management functions, such as payroll, direction and control of workers, and the right to hire and fire workers provided by the Employee Leasing Company; provided, however, that the leasing arrangement is long term and not an arrangement to provide the Client Company temporary help services during seasonal or unusual conditions.

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Employer. An Employing Unit subject to M.G.L. c. 151A, and the commonwealth, its instrumentalities, political subdivisions, an instrumentality of a political subdivision, including municipal hospitals, municipal electric companies, municipal water companies, regional school districts and any other instrumentalities as are financially independent and are created by statute.

Employing Unit. Any individual or type of organization including any partnership, firm, association, trust, trustee, estate, joint stock company, insurance company, corporation, whether domestic or foreign, or his or its legal representative, or the assignee, receiver, trustee in bankruptcy, trustee or successor of any of the foregoing or the legal representative of a deceased person who or which has or had one or more individuals performing services for him or it within the Commonwealth of Massachusetts. An entity is an Employing Unit whether or not the services performed are deemed employment under c. 151A.

Independent Contractor. An individual that provides services not deemed to be employment under M.G.L. c. 151A, § 2 because:

- (a) such individual has been and will continue to be free from control and direction in connection with the performance of such services, both under his contract for the performance of service and in fact;
- (b) such service is performed either outside the usual course of business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and
- (c) such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

Section 125 Cafeteria Plan. A cafeteria plan that meets the requirements of Title 26, Subtitle A, Chapter 1, Subchapter B, Part III, Section 125 of the Internal Revenue Code.

Seasonal Employee. An individual hired to perform services for wages by a seasonal employer certified under M.G.L. c. 151A during the seasonal period in the employer's seasonal operations for a specific temporary seasonal period; whose employment is limited to the period between the beginning and ending dates of the employer's seasonal period' and whose employment does not exceed 16 weeks.

Temporary Employee. An individual that works for an Employer on either a full or part time basis; whose employment is explicitly temporary in nature and does not exceed 12 consecutive weeks during the period from October 1 through September 30.

18.03 Employer HIRD Report

(1) General Requirements. Each Massachusetts Employer with eleven or more Full Time Equivalent Employees shall report the following information in an Employer HIRD Report specified by the Division.

- (a) Reporting Employer. An Employer has eleven or more Full Time Equivalent Employees if the sum of total payroll hours for all Employees for a calendar quarter, divided by 500, is greater than or equal to eleven. In calculating payroll hours:

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1. For each Employee with more than 500 payroll hours for the Employer, the Employer shall include 500 payroll hours.
2. Payroll hours include all hours for which an Employer paid wages including, but not limited to, regular, vacation, sick, Federal Medical Leave of Absence, short term disability, long term disability, overtime and holiday hours.
3. The Employer shall include the payroll hours of Seasonal Employees but shall not include the payroll hours of Independent Contractors as defined in 114.5 CMR 18.02.
4. An Employer who is determined to be a successor under M.G.L. c. 151A shall include the payroll hours of the predecessor's Employees during the determination period.

(b) Required information. Each Reporting Employer is required to report the following information:

1. Employer Legal Name
2. Employer DBA Name
3. Employer FEIN
4. Division of Unemployment Assistance Account Number
5. Whether the Employer adopts and/or maintains a Section 125 Cafeteria Plan in accordance with the requirements of the Connector
6. Whether the employer collects Employee HIRD forms from employees that decline to participate in group health plan or Section 125 plan
7. Whether the Employer contributes to the premium cost of a group health plan for its Employees
8. If the Employer contributes to the premium cost of a group health plan for its Employees, the employer contribution percentage for each employee category if the percentage varies by category.
9. If the Employer contributes to the premium cost of a group health plan for its Employees, the total monthly premium cost for the lowest priced health insurance offered for an individual plan and a family plan.
10. If the Employer offers an Employer sponsored group health plan, the open enrollment period of the Employer sponsored plan
11. Information about the Employer's full-time criteria:
 - (i) payroll hours per week does your firm require an employee to work to be considered full time
 - (ii) minimum number of payroll hours per week that firm requires an employee to work to be considered eligible for full-time health plan benefits
 - (iii) whether firm offers participation in a multiemployer health plan to any full-time employees during the applicable base period
 - (iv) how many months a full-time employee must work at firm before he or she is eligible for health benefits?

(c) Employee Leasing Company Arrangements. If and to the extent there is an arrangement between Client Company and an Employee Leasing Company, the Client Company is the Employer for purposes of M.G.L. c. 118G with respect to itself and its Employees covered by the arrangement. Nothing in 114.5 CMR

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18.00 prohibits the Client Company from executing an agreement with the Employee Leasing Company that assigns responsibility for filing the Client Company's Employer HIRD Report to the Employee Leasing Company. If the Employee Leasing Company fails to comply with such an agreement, the Client Company will continue to be responsible for compliance with 114.5 CMR 18.00. If an Employee Leasing Company files the Employer HIRD Report on behalf of its Client Companies, it shall file a separate report for each Client Company.

(2) Required Filings

(a) Due Dates. Each Reporting Employer shall submit its Employer HIRD Report with its Fair Share Contribution filing in accordance with the filing requirements of the Division of Unemployment Assistance. If an Employer is permitted to submit the Fair Share Contribution filing once a year, the Employer may file only one Employer HIRD Report per year. .

(b) Employer Attestation. All Employer HIRD reports shall be made under the pains and penalties of perjury. A Reporting Employer must designate a responsible individual authorized to verify and certify the accuracy of the Employer HIRD information submitted.

(c) The Division may change reporting requirements, including specified forms and filing deadlines by administrative bulletin.

(3) Data Verification

(a) Verification. Each Reporting Employer must submit any additional documentation requested by the Division to verify the accuracy of the data submitted.

(b) Audit. The Division may, upon notice to the Reporting Employer, inspect and copy any records necessary to verify the accuracy of the information submitted.

(c) Data Matches. The Division will initiate data matches, as permitted by law, with the Division of Unemployment Assistance and the Department of Revenue to verify the accuracy of the data submitted by the reporting Employer.

18.04 Employee HIRD Form

(1) General Requirements. Each Reporting Employer must provide an Employee HIRD Form for completion and signature by each Employee that declines to enroll in Employer-sponsored insurance or declines to use the Employer's Section 125 Cafeteria Plan to pay for health insurance. Each time an Employee of a Reporting Employer declines to enroll in Employer sponsored insurance or declines to use the Reporting Employer's Section 125 Plan to pay for health insurance, the Employee is required to complete, sign and return an Employee HIRD Form to the Reporting Employer.

(a) Reporting Employer. An employer is required to collect signed Employee HIRD Forms if it has either 5,500 payroll hours in any quarter or 22,000 payroll hours in a year.

(b) Required Information. The Employee HIRD Form must contain the following information:

1. Employee Name
2. Employer Name

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3. Whether the Employee was informed about the Employer's Section 125 Cafeteria Plan
4. Whether the Employee declined to use the Employer's Section 125 Cafeteria Plan to pay for health insurance
5. Whether the Employee was offered Employer subsidized health insurance
6. Whether the Employee declined to enroll in Employer subsidized health insurance
7. If the Employee declined Employer subsidized health insurance, the dollar amount of employee's portion of the monthly premium cost of the least expensive individual health plan offered by the Employer to the Employee
8. Whether the Employee has alternative insurance coverage.
9. The Employee's signature and the date on which the Employee signs the HIRD form

(c) Required Acknowledgements.

1. The Employee must acknowledge that he or she has declined to enroll in Employer sponsored insurance and/or has declined to use the Employer's Section Cafeteria 125 Plan to pay for health insurance.
2. The Employee must acknowledge that if he or she declines an Employer offer of subsidized health insurance, he or she may be liable for his or her health care costs.
3. The Employee must acknowledge that he or she is aware of the individual mandate under M.G.L. c. 111M and the penalties for failure to comply with the individual mandate.
4. The Employee must acknowledge that he or she is required to maintain a copy of the signed HIRD Form and that the HIRD Form contains information that must be reported in the Employee's Massachusetts tax return.
5. The Employee must indicate that by his or her signature, he or she acknowledges the truthfulness of his or her answers.

(2) HIRD Form.

(a) Form Availability; Versions. The Division will make available the Employee HIRD Form to Reporting Employers by posting the Form on the Division's website. The Division may revise the Employee HIRD Form from time to time. When an Employee is required to sign the Employee HIRD Form, the Reporting Employer must provide the Employee with the current version of the Employee HIRD form as posted on the website on the date of signature. A Reporting Employer is not required to have Employees sign an updated version of the Division's Employee HIRD Form if the Employee signed the version in effect on the date of signature. .

(b) Alternative Form. A Reporting Employer may collect the required information and acknowledgements from its Employees in any form or manner, including any electronic or other alternative media form that it deems necessary or appropriate; provided that the alternative form contains all of the required data elements listed in 114.5 CMR 18.04(1) and the same wording, order, and

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sequence and numbering of questions as they appear on the Employee HIRD Form version posted on the Division's website.

(c) Electronic Signatures. An Employee may sign an Employee HIRD Form using an electronic signature; provided such signature complies with applicable federal and state law.

(3) The Reporting Employer must retain the signed Employee HIRD Form for a period of three years.

(a) The Reporting Employer must make available to the Division and the Department of Revenue copies of signed Employee HIRD Forms or Alternative Forms for inspection and audit. The Reporting Employer must submit a copy of an Employee HIRD Form to the Division or the Department of Revenue upon request.

(b) If the Employee does not comply with the Reporting Employer's request to complete and return a signed Employee HIRD Form, the Reporting Employer must document diligent efforts to obtain such Form and maintain the documentation for a period of three years.

(c) Additional Documentation. The Reporting Employer must create and retain documentation for those Employees who are not required to sign an Employee HIRD Form for a period of three years, including Employees enrolled in the Reporting Employer's sponsored health plan and Employees not eligible for the Reporting Employer's Section 125 Cafeteria Plan in accordance with 956 CMR 4.06(3)(b)4.

(4) Due Date.

(a) Annual Open Enrollment. The Reporting Employer must obtain a signed Employee HIRD Form from each Employee required to sign a Form by the earlier of 30 days after the close of the applicable open enrollment period for the Reporting Employer's health insurance, and/or its Section 125 Cafeteria Plan, or September 30 of the reporting year. If an Employer's open enrollment period for 2007 - 2008 ended prior to July 1, 2007, and an Employee has signed an Employer form acknowledging that he or she was offered and declined Employer sponsored insurance, such Employee is not required to sign an Employee HIRD Form until the next applicable due date, in accordance with this 114.5 CMR 18.04(4), occurring on or after July 1, 2007. If and to the extent the Employer form is effective for any period on or after July 1, 2007, the Employer must retain the signed Employer form until July 1, 2009.

(b) Change in Status Terminations. If an Employee who enrolled in an Employer sponsored health insurance plan subsequently terminates participation in the plan between applicable enrollment periods in accordance with the reporting Employer's Section 125 cafeteria Plan (and remains employed by the Reporting Employer), the Employee must sign an Employee HIRD Form within 30 days of the date participation terminated.

(c) New Hire Enrollment. The Reporting Employer must obtain the signed Employee HIRD Form from each new Employee that either declines Employer sponsored health insurance or declines to use the Employer's Section 125 Cafeteria Plan to pay for health insurance within 30 days of the close of the applicable new hire enrollment period.

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(5) Signed Copy to Employee. The Reporting Employer must automatically provide a copy of each signed Employee HIRD Form to the Employee. The Reporting Employer must, upon request, provide a copy of the Employee's signed Employee HIRD Form to the Employee for use in filing the Employee's Massachusetts income tax return.

18.05 Other Provisions

(1) Information that identifies individual Employees by name or health insurance status shall not be a public record, but such information may be exchanged with the Department of Revenue, the Health Care Access Bureau of the Division of Insurance, the Division of Unemployment Assistance, or the Commonwealth Health Insurance Connector Authority to extent permitted by law under an Interagency Service Agreement.

(2) Penalties. An Employer that knowingly falsifies or fails to file any information required by the Division shall be punished by a fine of not less than \$1,000 or more than \$5,000.

(3) Severability. The provisions of 114.5 CMR 18.00 are severable. If any provision or the application of any provision is held to be invalid or unconstitutional, and such invalidity shall not be construed to affect the validity or constitutionality of any remaining provisions of 114.5 CMR 18.00 or the application of such provisions.

(2) Administrative Bulletins. The Division may issue administrative bulletins to clarify policies, update administrative requirements and specify information and documentation necessary to implement 114.5 CMR 18.00.

REGULATORY AUTHORITY

114.5 CMR 18.00 M.G.L. c. 118G.